



House of Representatives

General Assembly

File No. 483

February Session, 2012

Substitute House Bill No. 5434

House of Representatives, April 17, 2012

The Committee on Public Health reported through REP. RITTER, E. of the 38th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE PROFESSIONAL STANDARD OF CARE FOR EMERGENCY MEDICAL CARE PROVIDERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-184c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012*):

3 (a) (1) In any civil action to recover damages resulting from personal
4 injury or wrongful death occurring on or after October 1, 1987, in
5 which it is alleged that such injury or death resulted from the
6 negligence of a health care provider, as defined in section 52-184b, the
7 claimant shall have the burden of proving by the preponderance of the
8 evidence that the alleged actions of the health care provider
9 represented a breach of the prevailing professional standard of care for
10 that health care provider.

11 (2) Notwithstanding the provisions of subdivision (1) of this
12 subsection, in any civil action to recover damages resulting from
13 personal injury or wrongful death occurring on or after October 1,

14 2012, in which it is alleged that such injury or death resulted from the
15 negligence of a health care provider, as defined in section 52-184b, in
16 the course of providing treatment to a patient in a hospital emergency
17 department, the claimant shall have the burden of proving by clear
18 and convincing evidence that the alleged actions of the health care
19 provider represented a breach of the prevailing professional standard
20 of care for that health care provider.

21 (3) The prevailing professional standard of care for a given health
22 care provider shall be that level of care, skill and treatment which, in
23 light of all relevant surrounding circumstances, is recognized as
24 acceptable and appropriate by reasonably prudent similar health care
25 providers.

26 (b) If the defendant health care provider is not certified by the
27 appropriate American board as being a specialist, is not trained and
28 experienced in a medical specialty, or does not hold himself out as a
29 specialist, a "similar health care provider" is one who: (1) Is licensed by
30 the appropriate regulatory agency of this state or another state
31 requiring the same or greater qualifications; and (2) is trained and
32 experienced in the same discipline or school of practice and such
33 training and experience shall be as a result of the active involvement in
34 the practice or teaching of medicine within the five-year period before
35 the incident giving rise to the claim.

36 (c) If the defendant health care provider is certified by the
37 appropriate American board as a specialist, is trained and experienced
38 in a medical specialty, or holds himself out as a specialist, a "similar
39 health care provider" is one who: (1) Is trained and experienced in the
40 same specialty; and (2) is certified by the appropriate American board
41 in the same specialty; provided if the defendant health care provider is
42 providing treatment or diagnosis for a condition which is not within
43 his specialty, a specialist trained in the treatment or diagnosis for that
44 condition shall be considered a "similar health care provider".

45 (d) Any health care provider may testify as an expert in any action if
46 he: (1) Is a "similar health care provider" pursuant to subsection (b) or

47 (c) of this section; or (2) is not a similar health care provider pursuant
48 to subsection (b) or (c) of this section but, to the satisfaction of the
49 court, possesses sufficient training, experience and knowledge as a
50 result of practice or teaching in a related field of medicine, so as to be
51 able to provide such expert testimony as to the prevailing professional
52 standard of care in a given field of medicine. Such training, experience
53 or knowledge shall be as a result of the active involvement in the
54 practice or teaching of medicine within the five-year period before the
55 incident giving rise to the claim.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2012	52-184c
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Statement of Legislative Commissioners:

In section 1(a)(1) "but prior to October 1, 2012," was deleted, and, at the beginning of section 1(a)(2), "Notwithstanding the provisions of subdivision (1) of this subsection," was inserted to clarify that section 1(a)(2) sets forth an exception to the provisions of section 1(a)(1).

PH *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes a change to the burden of proof in medical malpractice cases and does not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5434****AN ACT CONCERNING THE PROFESSIONAL STANDARD OF CARE FOR EMERGENCY MEDICAL CARE PROVIDERS.****SUMMARY:**

This bill raises the burden of proof in medical malpractice cases arising from treatment in hospital emergency departments. It requires the plaintiff to prove by clear and convincing evidence, rather than by a preponderance of the evidence, that the medical provider breached the prevailing professional standard of care. The bill applies to cases involving injuries or wrongful death occurring on or after its effective date.

Clear and convincing evidence means it is highly probable or reasonably certain that facts are true; preponderance of the evidence means it is more likely than not that facts are true.

EFFECTIVE DATE: October 1, 2012

BACKGROUND***Related Bill***

SB 243 (File 331), reported favorably by the Judiciary Committee on March 21, 2012, expands the types of health care providers who can provide prelitigation opinion letters in medical malpractice cases and makes related changes.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 23 Nay 3 (03/30/2012)